IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Reference No.78 of 1979

Smt. Parwati & Others
Versus
Smt. Surji & Others

Date of Order ::: 12th July, 2006

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri R.K. Agarwal, Amicus Curiae

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BY THE COURT:-

Learned Munsif & Judicial Magistrate, 1st Class, Khetri, vide its order dated 16th of August, 1977 in Civil Suit No.26/75, made a present reference before this Court under Section 243 (1) of the Rajasthan Tenancy Act, 1955, to remove its doubt about jurisdiction to try the present suit.

This court passed an order to register the reference and to issue notice to the parties vide order dated 21.6.1979. Some of the parties were served and notices of some of the parties were received unserved with remarks that they have died. However, this being a reference, the same does not abate for want of substitution of legal representatives of the deceased parties. The parties, who have been served with the notice of this reference, have also not put their appearance before this court. Thereafter a notice of this reference was issued to

the State of Rajasthan through the Collector, Jhunjhunu and after service of notice the counsel for the State appeared before this court on 13.2.2004 and sought time. Thereafter the reference was fixed from time to time but nobody appeared on behalf of either party including the State of Rajasthan. This court vide order dated 21.2.2006 appointed Shri R.K. Agarwal, Advocate, to assist the court in the matter

Briefly stated the facts of the case are that the plaintiffs filed a suit for division of holding in the court of Assistant Collector, Khetri, under Section 53 of the Rajasthan Tenancy Act, 1955 wherein it was pleaded that in village Thothi, Tehsil Khetri, District Jhunjhunu, there is an agriculture land situated bearing khasra no.75 measuring 31 bigha 18 biswa and khasra no.93 measuring 23 bigha 5 biswa. Total measurement of the land is 55 bigha and 3 biswa barani. The land stood in the name of recorded tenant Shri Nekiram, who died in the month of March or April, 1970. After the death of Nekiram, his widow, sons and daughters are the recorded tenant of the said land in dispute. The widow of deceased Nekiram is the defendant no.1 and his three sons are - the plaintiff no.3 and 4 and defendant no.2; his five daughters are plaintiff nos.1, 2, 5, and 6 and defendant no.3. The said land was said to be a land of joint tenancy and each one has equal share in the same. It was also pleaded that the defendant no.1, without obtaining prior permission as the natural guardian of plaintiff nos.3 and 4, from the District Judge, and

defendant no.2 in his personal capacity, executed a sale-deed dated 20.4.1971 in respect of the land measuring 7 bigha 3 biswa out of khasra no.75 measuring 31 bigha 18 biswa, in favour of defendant no.4, and 11 bigha 13 biswa in favour of defendant no.5, and 11 bigha 12 biswa in favour of defendant no.6 out of khasra no.93 measuring 23 bigha 5 biswa, without obtaining any amount towards consideration and got the sale-deed registered in their favour and also handed over the possession thereof. A notice was given to the defendant nos.4 to 6 to produce the original sale-deeds through this plaint. There was no fragmentation of the holding, the land was in the joint tenancy and further the plaintiffs no.3 to 6 were minor. The defendant no.2 sold the land in excess to his share without any partition of the land; all the three sale-deeds are void and without consideration and that the defendants no.4 to 6 are in possession only as trespasser. It was pleaded that the suit is triable before the revenue court as it was a suit for division of holding and as per Item no.3 of the Third Schedule of the Rajasthan Tenancy Act, 1955 the revenue court has jurisdiction to try and decide the same. It was prayed in the suit that the share of plaintiff nos.1 and 2 to the extent of 2/9 and share of plaintiff nos.3 to 6 to the extent of 4/9 in the land in dispute, be declared and a decree of possession in their favour be passed, and the defendants be dispossessed from the share of holding of the plaintiffs.

The Assistant Collector, vide its order dated 28.1.1975, passed an order that the present suit is triable by civil court, therefore, the plaint be returned for presentation in the court concerned and consequently the original plaint was returned on 25.4.1975 and the same was filed in the court of Munsif & Judicial Magistrate, 1st Class, Khetri, on 9.5.1975. The defendants filed their written statement on or about 22.2.1976, wherein it was also pleaded that the civil court has got no jurisdiction to try the present suit.

On the basis of the pleadings of the parties the learned lower court framed an issue on 8.2.1977 as under:-

"क्या इस न्यायालय को यह वाद सुनने का श्रवणाधिकार नहीं है?"

The learned lower court, after hearing the arguments of both sides, came to a conclusion that the present suit is triable by revenue court but Assistant Collector, Khetri, vide its order dated 28.1.1975, has returned the plaint for trial by civil court, therefore, vide order dated 16.8.1977, referred the matter to this court under Section 243 (1) of the Rajasthan Tenancy Act, 1955, for removal of doubt about jurisdiction of the civil court.

I have heard the learned counsel Shri R.K. Agarwal.

The learned lower court, after considering the averments of the plaint, has recorded its finding that in view of the judgment of this court in Mohanlal Vs. Ratna (AIR 1971 Rajasthan 164) and Rooda Ram & Others Vs. Rattu

Ram & Another (1972 WLN Part-I, 323), the present suit is triable by the revenue court only but in view of the fact that the Assistant Collector, Khetri, vide its order dated 28.1.1975 has returned the plaint for presentation in the civil court, has made the present reference to this court.

In Mohanlal's case (supra), this court, in Para 9, held that it is well established that in order to determine the true nature of the relief claimed in a suit, the pith and substance, and not the form in which the relief may be couched has to be considered.

In Rooda Ram's case (supra), this court considered the provisions of Section 207 of the Rajasthan Tenancy Act, 1955 and observed that the burden of the section is the nature of the cause of action and in the peculiar facts and circumstances of that case held that the revenue court has got jurisdiction to try the suit.

In the case of Bhera Vs. Kesar Singh (1966 RLW 305), there was a suit for redemption of tenancy holding mortgaged with possession of about eight years before date of suit, and this court held that the suit was not covered by any Section of Rajasthan Tenancy Act and hence triable by civil court.

In Badrilal & Another Vs. Moda & Others (AIR 1979 Rajasthan 142), a Full Bench of this Court considered the factors relevant for deciding the jurisdiction of civil and revenue court and in Para 7 held as under:-

> "For the purpose of seeing whether the suit is exclusively triable by a

> revenue court and the civil court has no jurisdiction to try the same, averments in the plaint are carefully to be looked into. All the allegations made in the plaint should be taken into consideration and not the reliefs alone claimed in the plaint for the purpose of determining the question of jurisdiction. The substance of the plaint provides a good guide to find out the true nature of the object of the suit."

In Gurucharansingh & Others Vs. Mst. Gurdayal Kaur & Others (AIR 1982 Rajasthan 91), the Division Bench of this Court held that it is well settled that it is the substance of the plaint and the true nature of the object of the suit that has to be seen for the purpose of determining the question of jurisdiction.

In Jaswant Singh etc. Vs. Board of Revenue & Others (1984 RLR (3) 791), the Division Bench of this Court considered the provisions of Section 207 of the Rajasthan Tenancy Act, 1955 and held as under:-

> "4. It is well settled that the question of jurisdiction ought to be decided on the basis of allegations made in the plaint. There is no doubt that some times the plaint is so drafted as to camouflage the real purpose thereof and as such it has often been held that the substance of the plaint should be considered by the

> court for the purpose of determination of the question of jurisdiction.
>
> 8. Another principle which has to be kept in view is that exclusion of jurisdiction of a civil court cannot be lightly inferred and the jurisdiction of the civil court cannot be ousted until the exclusion is clearly established. Under Section 9 of the Code of Civil Procedure, a civil court can entertain a suit of a civil nature except a suit of which cognizance is either expressly or impliedly barred. In (5) Abdul Waheed Khan Vs. Bhawani (AIR 1966 SC 1718), their Lordships of the Supreme Court observed that it was also equally well settled that a statute ousting the jurisdiction of the civil court must be strictly construed."

From the above referred decisions of this Court the question regarding determination of jurisdiction of civil or revenue court is well settled that it is a substance of the plaint and the true nature of the object of the suit that has to be seen. The averments made in the plaint and all the allegations alleged therein should be considered in order to decide whether a suit is exclusively triable by a revenue court or civil court, and not the relief alone claimed in the plaint for the purpose of determining the question of jurisdiction. The substance of the plaint

provides a good guide to find out the true nature of the object of the suit.

In the light of the above well settled propositions of law, now I come to the present case to determine whether the present suit is triable by the civil court or revenue court.

In this connection it is relevant to mention that the plaintiffs have described the subject matter of the suit as “suit for partition or division of holding” under Section 53 of the
Rajasthan Tenancy Act, 1955. The prayer in the plaint is as under:-

> "वादी निवेदन करते हैं कि
> 1. ग्राम ठोठी स्थित खसरा नंबर 75 और 93 की 55 बीघा 3 बिस्वा से वादी 1, 2 व 7 का 1/3 भाग और वादी 3 से 6 तक का 4/9 भाग अलहदा करके प्रतिवादीगण में से जिनका कब्जा पाया जावे उन्हें बेदखल करके वादीगण का दखल कराया जावे।
>
> 2. खर्चा दावा दिलाया जावे।
>
> 3. अन्य कोई भी अनुतोष जो न्यायालय के निकट उचित हो वादीगण को प्राप्त कराया जावे।"

The above subject matter, quoted section and relief claimed in the plaint, make it clear that the present suit is a suit for division of holding in between the plaintiffs and defendants in respect of agriculture land in dispute and for possession of the same. The relief claimed in the suit is covered under Item 3 of the Third Schedule of the

Rajasthan Tenancy Act, 1955 and it is exclusively triable by the revenue court, but as per well settled proposition of law it is the averments of the plaint which are more relevant to be considered for determining the jurisdiction of the concerned court and in this connection it is relevant to reproduce Para 2 to 7 of the plaint, which read as under:-

> “2.यह कि उक्त श्री नेकीराम की मृत्यु हो जाने पर ग्राम ठोठी स्थित खसरा नंबर 75 और 93 की उक्त 55 बीघा 3 बिस्वा भूमि के खातेदार टेनेन्ट उसकी विधवा प्रतिवादी 1 उसके पुत्र वादी 3 व 4 और प्रतिवादी 2 तथा उसकी पुत्रियां वादी1,2,5,6 और 7 है।
>
> 3. यह कि इस तरह ग्राम ठोठी स्थित खसरा नंबर 75 और 93 की उक्त 55 बीघा 3 बिस्वा बारानी भूमि के वादीगण और प्रतिवादी 1 व 2 संयुक्त खातेदार टेनेन्ट है और उनमें से प्रत्येक का उक्त भूमि से बराबर भाग है।
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> 4. यह कि प्रतिवादी 1 ने वादी 3 और 4 की संरक्षिता की हैसियत से जिला जज महोदय की अनुमति प्राप्त किये बिना और प्रतिवादी 2 ने अपनी निजी हैसियत से तारीख 20 अप्रेल 1971 को ग्राम ठोठी स्थित खसरा नंबर 75 की 31 बीघा 18 बिस्वा भूमि में से 7 बीघा 3 बिस्वा भूमि के संबंध में प्रतिवादी 3 के हक से तथा खसरा नंबर 93 की 23 बीघा 5 बिस्वा भूमि में से 11 बीघा 13 बिस्वा के सबंध में प्रतिवादी 4 के हक में तथा 11 बीघा 12 बिस्वा के संबंध में प्रतिवादी 5 के हक में बिला कोई रकम प्राप्त किये ही बेनामें तहरीर व तकमील कराके उनकी रजिस्ट्री करा दी तथा भूमि पर उनका कब्जा करा दिया। उक्त तीनों असल बेनामें पेश करने हेतु वादीगण

प्रतिवादीगण 3 से 5 तक को इस वाद पत्र द्वारा नोटिस देते हैं।

5. यह कि इस वादपत्र के खण्ड 4 में अंकित भूमि का विक्रय अन्य कारणों के अलावा खसरा संख्या के अंशों में होने के कारण कुल संयुक्त खातेदारान की ओर से न होने के कारण वादी 3 से 6 तक के नाबालिग होने के कारण और प्रतिवादी 2 के हिस्से से अधिक भूमि का बिला बदल व बिला विभाजन विक्रय होने के कारण उक्त क्त तीनों विक्रय पत्र निष्फल और व्यर्थ है तथा प्रतिवादी 3 से 5 तक का कब्जा विवादास्पद भूमि पर बहैसियत अतिक्रमी है।

6. यह कि वादी 1 व 2 का विवादास्पद 55 बीघा 3 बिस्वा भूमि में 2/9 हिस्सा है तथा वादी 3 से 4 तक का उक्त भूमि में 4/9 हिस्सा है और वादी 7 का उक्त भूमि में 1/9 हिस्सा है। इस तरह समस्त वादीगण का उक्त विवादास्पद भूमि में 7/9 भाग है।

7. यह कि वादी 1, 2 व 7 का विचार है कि विवादास्पद भूमि का संयुक्त खाता रखने में उन्हें नुकसान और परेशानी है जो प्रतिवादी 1 व 2 की कार्यवाही विक्रय भूमि से प्रकट है। इसलिये उन्होंने अपने और अपने अवयस्क भाई बहिनों के लाभ के लिये विवादास्पद भूमि के खाते का विभाजन तैय किया है। यह विभाजन वादी 3 से 6 तक के हित के लिये है।"

In Para 2 of the plaint it has been pleaded that the original recorded tenant of the land in dispute was Nekiram and plaintiffs and defendants all are his legal representatives and are entitled to hold the same. In Para 3 of the plaint it has been pleaded that all the legal

representatives of deceased Nekiram are joint tenant of the land in dispute. In Para 4 of the plaint it has been pleaded that the defendant no.1 Smt. Surji Widow of Nekiram was legal guardian of plaintiffs no.3 and 4, who were minor, but she did not seek permission from the District Judge to sell the share in agriculture land belonging to the plaintiffs 3 and 4 and executed the sale-deed dated 20.4.1971. Similarly the defendant 2 also executed the sale-deed as pleaded in Para 4 of the plaint; wherein it was also pleaded that the sale-deed was without any consideration and the sale-deed was executed by the defendants 1, 2 and 3 in excess of their shares in the land in dispute. From the averments of Para 4 and 5 it becomes clear that the sale-deed dated 20.4.1971 was executed by the defendant 1 in violation of sub-section (3) of Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short, ‘the Act, 1956’) and the said sale-deed was voidable at the instance of the minor or by any person claiming under him. The issue as to whether any particular document is voidable or not, is exclusively triable by the civil court only. If the document would have been a void document then it could have been ignored by revenue court while deciding the suit but so far as the document which is said to be voidable is concerned, as there is an allegation in the present suit about violation of sub-section (3) of Section 8 of the Act, 1956, therefore, the said issue can only be tried and decided by the civil court only. It also appears that impliedly a relief has been sought for

cancellation of the registered sale-deed dated 20.4.1971 executed by the defendants 1, 2 and 3 in favour of the defendants 4 to 6. The suit for cancellation of the sale-deed also lies with the civil court and it is only the civil court which is competent to cancel the registered sale-deed.

As per the settled propositions of law as discussed and referred above it is clear that the relevant factor for determining the jurisdiction of civil court and revenue court is the averments of the plaint and not the relief alone claimed in the plaint. Para 4 and 5 of the plaint, as reproduced above, makes it clear that the plaintiffs have challenged the sale-deed dated 20.4.1971 on two grounds – one is that the plaintiffs 3 and 4 were minor and their share of land could not have been sold by natural guardian i.e. their mother the defendant 1, without previous permission of the court as required under Section 8 of the Act, 1956. If any immovable property of a minor has been sold by natural guardian in violation of sub-section (1) or sub-section (2) of Section 8 then the same is voidable at the instance of the minor or by any person claiming under him; another ground is that the defendants 1 to 3 have sold the undivided joint family land in excess to their share therein meaning thereby they have sold the land belonging to the plaintiffs also. From the averments of Para 4 and 5 of the plaint it appears that the present suit is a suit for cancellation of the sale-deed dated 20.4.1971 and the same is exclusively triable by the civil court only.

Initially the suit was filed in the revenue court but it was returned for presentation in the civil court and the same was filed in the lower court.

In this connection Section 242 of the Rajasthan Tenancy Act, 1955 is reproduced:-

> “242. Procedure when plea of tenancy rights raised in civil courts – (1) If, in any suit relating to agricultural land instituted in a civil court, any question regarding tenancy right arises and such question has not previously been determined by a revenue court of competent jurisdiction, the civil court shall frame an issue on the plea of tenancy and submit the record to the appropriate revenue court for the decision of that issue only.
> Explanation – A plea of tenancy which is clearly untenable and intended solely to oust the jurisdiction of the civil court shall not be deemed to raise a plea of tenancy.
>
> (2) The revenue court, after re-framing the issue, if necessary, shall decide such issue only, and return the record together with its finding thereon, to the civil court which submitted it.
>
> (3) The civil court shall then proceed to decide the suit, accepting the finding of the revenue court on the issue referred to it.

> (4) The finding of the revenue court on the issue referred to it shall, for the purpose of appeal, be deemed to be a part of the finding of the civil court.”

The above provisions make it clear that if in any suit relating to agricultural land instituted in a civil court, any question regarding tenancy right arises and such question has not previously been determined by a revenue court of competent jurisdiction, the civil court shall frame an issue on the plea of tenancy and submit the record to the appropriate revenue court for the decision of that issue only.

After considering the averments of the plaint it is clear that after executing the sale-deed dated 20.4.1971 in favour of the defendants 4 to 6 a right has been created in favour of third party i.e. defendants 4 to 6 and they have also got possession of the agriculture land as per the details given in the registered sale-deed dated 20.4.1971, therefore, unless the sale-deed itself is cancelled the decree of possession of agriculture land in favour of plaintiffs and against the defendants 4 to 6, cannot be passed, therefore, although in the subject matter the suit has been described as “a suit for partition” and in the prayer clause also a relief has been sought for division of holding and for possession which is triable by revenue court but, as discussed above, the relevant factors for determination of jurisdiction of civil or revenue court is

the averments of the plaint and not alone the relief claimed in the plaint and as per the averments made in the plaint I am satisfied that the present suit is triable by the civil court. So far as questions regarding tenancy rights are concerned, the civil court will act as per the procedure laid down in Section 242 of the Rajasthan Tenancy Act, 1955.

In view of the above, it is held that the present suit is triable by the Munsif & Judicial Magistrate, Khetri. The reference is answered accordingly.

(Narendra Kumar Jain) J.

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